

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID E. STONE,

No. C 11-00184 SBA (PR)

Petitioner,

**ORDER DENYING PETITION FOR A
WRIT OF HABEAS CORPUS; AND
DENYING CERTIFICATE OF
APPEALABILITY**

v.

R. GROUNDS, Warden,

Respondent.

Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 claiming that his constitutional rights were violated in connection with a decision by the California Board of Parole Hearings (Board) in 2009 denying him parole. Petitioner specifically claims that the decision does not comport with due process because it is not supported by "some evidence" demonstrating that he poses a current unreasonable threat to the public.

In the context of parole, a prisoner subject to a parole statute similar to California's receives adequate process when he is allowed an opportunity to be heard and is provided with a statement of the reasons why parole was denied. Swarthout v. Cooke, No. 10-333, slip op. at 4-5 (U.S. Jan. 24, 2011). The attachments to the petition show Petitioner received at least this amount of process. The Constitution does not require more. Id. at 5.


Whether the Board's decision was supported by some evidence of current dangerousness is irrelevant in federal habeas. The Supreme Court has made clear that "it is no federal concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what the Constitution demands) was correctly applied." Id. at 6.

For the foregoing reasons, the petition for a writ of habeas corpus is DENIED. Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability under 28 U.S.C. § 2253(c) is DENIED because it cannot be said that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from the Ninth Circuit Court of Appeals.

1 The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending
2 motions, and close the file.

3 IT IS SO ORDERED.

4 DATED: 2/28/11


5 SAUNDRA BROWN ARMSTRONG
United States District Judge

United States District Court
For the Northern District of California

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DAVID E. STONE,

5 Plaintiff,

6 v.

7 R. GROUNDS et al,

8 Defendant.

Case Number: CV11-00184 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on February 28, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 David E. Stone C-26818
16 Correctional Training Facility
17 P.O. Box 689
18 Soledad, CA 93960

19 Dated: February 28, 2011

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk
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United States District Court
For the Northern District of California